

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3141 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

BHALVANTSINH @ DEEPAK K JHARIYA

Versus

RAVI INDUSTRIES

Appearance:

MS ASHA H GUPTA for Petitioner

MR RAJNI H MEHTA for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 18/09/97

ORAL JUDGEMENT

1. Admit. Mr. Rajni H. Mehta appears and waives service of admission for and on behalf of Respondent No.2. Though notice is issued and matter is adjourned twice, opponent No. 1 has not bothered to appear.

2. This is an appeal by workman Balvantsinh alias Deepak Keshavlal Jhariya who was serving in the opponent No.1 industry which was insured with the opponent No.2. The appeal is preferred under Sec. 30(1a) of the Workmen's Compensation Act, 1923, against the judgment and order of the Judge of the Labour Court dated 9th June, 1994, he being the Ex-officio Commissioner under the Workmen's Compensation Act at Rajkot in Workman Compensation Application No. 22 of 1991. The workman claimed total amount of Rs. 64,572/- as compensation together with penalty interest and cost while the Commissioner for Workmen's Compensation Act awarded the amount of Rs. 16,150.40ps as compensation and the opponents were directed to deposit the said amount of compensation in court within one month from the date of the order failing which they were liable to pay interest at 6 per cent per annum from the date of the order till realisation. The workman was fair enough not to press for penalty interest and cost against the opponents.

3. Being aggrieved by such judgment, the concerned workman has preferred the present appeal and Ms. Asha Gupta, learned counsel appearing for the workman has very vehemently urged before the court that injury in question was a schedule injury as defined under Sec. 2(1) read with Section 4 of the Workmen's Compensation Act, 1923. Part-II of the said Schedule deals with list of injuries deemed to result in permanent partial disablement and further sub-heading is "Amputation cases - upper limbs (either arm)". Item No.4 of the aforesaid Part-II reads as under :

PART II

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT

Amputation cases - upper limbs (either arm)

Serial No.	Description of injury	of loss	Percentage of earning capacity

4. Loss of hand or of the thumb and }

four fingers of one hand or	}	
amputation from 4-1/2" below tip	}	60
of olecranon.	}	

4. As against the aforesaid claim of the workman to be awarded 60 per cent in view of the nature of injury, which falls in Item No.4 set out hereinabove, the Commissioner for Workmen's Compensation Act, Rajkot, has considered the permanent partial disablement to the extent of 35 per cent only and has awarded Rs. 16,150.40ps. He has also noted the fact that the workman himself has not pressed for penalty interest and costs.

5. Ms. Asha Gupta has vehemently urged before the court that, in fact, the permanent partial disablement ought to have been computed at 60 per cent and not 35 per cent as is done by the Workmen's Compensation Court. There is no dispute about the fact that at the relevant time the Industry i.e. opponent No.1 was insured with opponent No.2 and policy is produced at Exhibit 11. The Insurance Company, however, appears to have produced a list of documents at Exhibit 8 on 23rd of March, 1993 and at Item No. 8/3, Medical Report dated 24th October, 1990 is produced. The advocate of the workman has made a clear endorsement that except Item No.3, there was no objection to other documents being exhibited, meaning thereby that the document at Item No.3 was not admitted and the same was required to be proved by the Oriental Insurance Company. Admittedly, neither the owner of the Industry nor the Insurance Company has led any oral evidence nor its Dr. Bhayani who has allegedly given the Medical Certificate and Report, is examined so as to justify his case that the permanent partial disablement can be worked out to 35 per cent only. In the absence of proof of this document which is rightly not exhibited, the Workmen's Compensation Court ought not to have placed any reliance thereon whatsoever as per the law of evidence or as per the law applicable to the Workmen's Compensation Court. Unless Dr. Bhayani is examined as witness and offered for cross-examination as to why he was assessing the permanent partial disablement at 35 per cent, there was no justification on the part of the Commissioner to reduce the permanent partial disability to 35 per cent.

6. As against the aforesaid, the workman has examined himself as a witness by giving his evidence at Exhibit 13. The workman was a daily wager since last seven months earning a wage of Rs. 16/- per day and on

24th of July, 1990 while he was in the discharge of his duties and was doing the work which was entrusted to him, his left hand entangled in the machine and he was seriously injured and that there was complete detachment of the left hand from the level of wrist. He was taken to the hospital by a worker working in the neighbours factory and was treated there and thereafter he was taken to Dr. Bhayani's hospital on 24th of July, 1990. If really the nature of disability was to be seriously disputed by the Insurance Company, examination of Dr. Bhayani before the Workmen's Compensation Court was absolutely essential as the workman would have the opportunity of cross-examining him and of falsifying him about the assessment of permanent partial disability. That task was unfortunately not performed with the result that, in my opinion, no reliance could be placed on the certificate of Dr. Bhayani which could not have been exhibited, in other words, it was no evidence in view of the specific objection taken by the advocate of the workman. The question now is as to whether the workman is entitled to 60 per cent as per the aforesaid Schedule or he is entitled to only 35 per cent as is awarded by the Workmen's Compensation Court. Undoubtedly, Mr. Rajani H. Mehta has very vehemently submitted that no interference of this court is called for in view of the certificate issued by Dr. Bhayani. Unfortunately, he fails to understand when such a submission is made that such certificate is neither exhibited nor proved in court and Dr. Bhayani has not been subjected to cross-examination by the advocate of the workman. The court in fact, therefore, shall have to rely upon the evidence of workman at Exhibit 13, which is the only evidence. The fact that he has been earning wages of Rs. 16 per day is not in dispute. The fact that he received injury while in service in the factory is also not in dispute. The fact that his left hand entangled in the cutter machine is also not in dispute. Whether the hand is totally cut off or merely got entangled and once again it was put in its original condition, is not established by the Insurance Company at all. Dr. Bhayani is not examined at all as witness. In that view of the matter, the Workmmen's Compensation Court ought to have relied upon the evidence of the workman and the aforesaid fixation of liability under the Schedule.

7. However, without laying down any precedent in the matter of this nature and leaving some leeway for the guess work, there is no need even for the Insurance Company to be so personal so as to get false and fabricated certificate of Dr. Bhayani. It's unfortunate omission stares in its face and it must face the

consequence. In my opinion, the interest of justice would be met, without laying down any precedent in the matter of this nature if the permanent partial disability is assessed at 52 per cent and the liability of the Insurance Company is worked out accordingly. Ms. Asha Gupta has been fair enough to point out to the court that even earlier based on the award of the Workmen's Compensation Court, the Insurance Company did not rightly work out the liability. If the permanent partial disability is to be assessed at 52 per cent, total liability shall have to be computed as under:

"240 (50 days of the wages) x 224 (multiplier of 20 years of age) x 52% (permanent partial disability as counted by this Court) divided by 100 which would totally work out to Rs. 27,955.20ps."

Out of which, the Insurance Company has already deposited Rs. 16,150.40ps. The balance amount which is now required to be deposited by the Insurance Company works out to Rs. 11,804.80ps and the same is directed to be deposited within a period of six weeks in the Workmen's Compensation Court at Rajkot and the applicant shall be at liberty to withdraw the same amount.

8. In the result, the First Appeal partially succeeds to the aforesaid extent. There shall be no order as to costs.

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